

HOUSE BILL 2201

By Daniel

AN ACT to amend Tennessee Code Annotated, Title 4;  
Title 7; Title 38; Title 62; Title 63 and Title 67,  
relative to businesses, professions, and  
occupations.

WHEREAS, the right of individuals to pursue a chosen business or profession, free from arbitrary or excessive government interference, is a fundamental civil right; and

WHEREAS, the freedom to earn an honest living traditionally has provided the surest means for economic mobility; and

WHEREAS, in recent years, many regulations of entry into businesses and professions have exceeded legitimate public purposes and have had the effect of arbitrarily limiting entry and reducing competition; and

WHEREAS, the burden of excessive regulation is borne most heavily by individuals outside the economic mainstream, for whom opportunities for economic advancement are curtailed; and

WHEREAS, it is in the public interest to ensure the right of all individuals to pursue legitimate entrepreneurial and professional opportunities to the limits of their talent and ambition; to provide the means for the vindication of this right; and to ensure that regulations of entry into businesses, professions, and occupations are demonstrably necessary and carefully tailored to legitimate health, safety, and welfare objectives; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the "Right to Earn a Living Act."

SECTION 2. Tennessee Code Annotated, Title 4, is amended by adding the following language as a new chapter:

**4-42-101.** As used in this chapter:

(1) "Agency" means any branch, department, division, office, or agency of state government;

(2) "Entry regulations" means any law, ordinance, regulation, rule, policy, fee, condition, test, permit, administrative practice, or other provision relating to a market, or the opportunity to engage in any business, profession, or occupation;

(3) "Public service restrictions" means any law, ordinance, regulation, rule, policy, fee, condition, test, permit, or other administrative practice, with or without the support of public subsidy, or user fees;

(4) "Subsidy" means taxes, grants, user fees, or any other funds received by or on behalf of an agency; and

(5) "Welfare" means the protection of members of the public against fraud or harm, and does not include the protection of existing businesses or agencies, whether publicly or privately owned, against competition.

**4-42-102.**

All entry regulations by an agency with respect to businesses, professions, and occupations shall be limited to those demonstrably necessary and carefully tailored to fulfill legitimate public health, safety, or welfare objectives.

**4-42-103.**

All public service restrictions shall be limited to those demonstrably necessary and carefully tailored to fulfill legitimate public health, safety, or welfare objectives.

**4-42-104.**

(a) By July 1, 2017, and every July 1 thereafter, an agency shall conduct a comprehensive review of all entry regulations within the jurisdiction of the agency. For each entry regulation, the agency shall:

(1) Articulate, with specificity, any and all public health, safety, or welfare objectives served by the entry regulation; and

(2) Articulate any reason why the regulation is necessary to serve any specified objective that is identified.

(b) To the extent the agency finds any entry regulation that does not serve any specified public health, safety, or welfare objective, the agency shall, as soon as possible:

(1) Repeal the entry regulation or modify the entry regulation to serve a specified public health, safety, or welfare objective; or

(2) Identify in the form of recommendations any actions necessary to repeal or modify the entry regulation in order to serve a specified public health, safety, or welfare objective, if the agency does not have authority to repeal or modify the entry regulation.

**4-42-105.**

(a)

(1) Any person may petition any agency to repeal or modify any entry regulation into a business, profession, or occupation within its jurisdiction.

(2) Within ninety (90) days of a petition filed under this subsection (a), the agency shall repeal the entry regulation, modify the regulation to achieve the standard set forth in § 4-42-102, or state the specific basis on which the agency concludes the regulation conforms with the standard set forth in § 4-42-102.

(b)

(1) Any person may petition an agency to repeal or modify a public service restriction within its jurisdiction.

(2) Within ninety (90) days of a petition filed under this subsection (b), the agency shall state the basis on which the agency concludes the public service restriction conforms with the standard set forth in § 4-42-103.

**4-42-106.**

(a) If a petition was filed pursuant to § 4-42-105 and has not been acted upon favorably by the agency, then the person filing a petition challenging an entry regulation or public service restriction may file an action in a court of general jurisdiction.

(b) With respect to the challenge of an entry regulation, the plaintiff shall prevail if the court finds by a preponderance of evidence that the challenged entry regulation on its face, or in its effect, burdens the creation of a business, the entry of a business into a particular market, or entry of business into a profession or occupation, and:

(1) The challenged entry regulation is not demonstrably necessary and carefully tailored to fulfill legitimate public health, safety, or welfare objectives; or

(2) The challenged entry regulation is necessary to the legitimate public health, safety, or welfare objectives; provided, that objectives can be effectively served by regulations less burdensome to economic opportunity.

(c) With respect to the challenge of a public service restriction, the plaintiff shall prevail if the court finds by a preponderance of the evidence that on its face, or in its effect, that:

(1) The challenged public service restriction is not demonstrably necessary and carefully tailored to fulfill legitimate public health, safety, or welfare objectives; or

(2) The challenged public service restriction is necessary to fulfill legitimate public health, safety, or welfare objectives; such objectives can be effectively served by restrictions that allow greater private participation.

(d) Upon a finding for the plaintiff, the court shall enjoin further enforcement of the challenged entry regulation or public service restriction.

**4-42-107.**

The right of individuals to pursue a chosen business, profession, or occupation is a matter of statewide concern and is not subject to further inconsistent regulation by a county, city, town, or other political subdivision of this state. This chapter preempts all inconsistent rules, regulations, codes, ordinances, and other laws adopted by a county, city, town, or other political subdivision of this state regarding the right of individuals to pursue a chosen business, profession, or occupation.

SECTION 3. Tennessee Code Annotated, Title 7, is amended by adding the following language as a new chapter:

**7-70-101.** As used in this chapter:

(1) "Agency" means any branch, department, division, office, or agency of local government, and any county, city, town, or political subdivision of this state;

(2) "Entry regulations" means any law, ordinance, regulation, rule, policy, fee, condition, test, permit, administrative practice, or other provision relating to a market, or the opportunity to engage in any occupation or profession;

(3) "Public service restrictions" means any law, ordinance, regulation, rule, policy, fee, condition, test, permit, or other administrative practice, with or without the support of public subsidy, or user fees;

(4) "Subsidy" means taxes, grants, user fees, or any other funds received by or on behalf of an agency; and

(5) "Welfare" means the protection of members of the public against fraud or harm, and does not include the protection of existing businesses or agencies, whether publicly or privately owned, against competition.

**7-70-102.**

All entry regulations with respect to businesses, professions, and occupations shall be limited to those demonstrably necessary and carefully tailored to fulfill legitimate public health, safety, or welfare objectives.

**7-70-103.**

All public service restrictions shall be limited to those demonstrably necessary and carefully tailored to fulfill legitimate public health, safety, or welfare objectives.

**7-70-104.**

(a) By July 1, 2017, and every July 1 thereafter, an agency shall conduct a comprehensive review of all entry regulations within the jurisdiction of the agency. For each entry regulation, the agency shall:

(1) Articulate, with specificity, any and all public health, safety, or welfare objectives served by the entry regulation; and

(2) Articulate any reason why the regulation is necessary to serve any specified objective that is identified.

(b) To the extent the agency finds any entry regulation that does not serve any specified public health, safety, or welfare objective, the agency shall, as soon as possible:

(1) Repeal the entry regulation or modify the entry regulation to serve a specified public health, safety, or welfare objective; or

(2) Identify in the form of recommendations any actions necessary to repeal or modify the entry regulation in order to serve a specified public health, safety, or welfare objective, if the agency does not have authority to repeal or modify the entry regulation.

**7-70-105.**

(a)

(1) Any person may petition an agency to repeal or modify an entry regulation into a business or profession within the jurisdiction of the agency.

(2) Within ninety (90) days of a petition filed under this subsection (a), the agency shall repeal the entry regulation, modify the regulation to achieve the standard set forth in § 7-70-102, or state the specific basis on which the agency concludes the regulation conforms with the standard set forth in § 7-70-102.

(b)

(1) Any person may petition an agency to repeal or modify a public service restriction within the jurisdiction of the agency.

(2) Within ninety (90) days of a petition filed under this subsection (c), the agency shall state the basis on which the agency concludes the public service restriction conforms with the standard set forth in § 7-70-103.

**7-70-106.**

(a) If a petition was filed pursuant to § 7-70-105 and has not been acted upon favorably by the agency, then the person filing a petition challenging an entry regulation or public service restriction may file an action in a court of general jurisdiction.

(b) With respect to the challenge of an entry regulation, the plaintiff shall prevail if the court finds by a preponderance of evidence that the challenged entry regulation on its face, or in its effect, burdens the creation of a business, the entry of a business into a particular market, or entry of business into a profession or occupation, and:

(1) The challenged entry regulation is not demonstrably necessary and carefully tailored to fulfill legitimate public health, safety, or welfare objectives; or

(2) The challenged entry regulation is necessary to the legitimate public health, safety, or welfare objectives; provided, that objectives can be effectively served by regulations less burdensome to economic opportunity.

(c) With respect to the challenge of a public service restriction, the plaintiff shall prevail if the court finds by a preponderance of the evidence that on its face, or in its effect, that:

(1) The challenged public service restriction is not demonstrably necessary and carefully tailored to fulfill legitimate public health, safety, or welfare objectives; or

(2) The challenged public service restriction is necessary to fulfill legitimate public health, safety, or welfare objectives; provided, that objectives can be effectively served by restrictions that allow greater private participation.

(d) Upon a finding for the plaintiff, the court shall enjoin further enforcement of the challenged entry regulation or public service restriction.

**7-70-107.**

The right of individuals to pursue a chosen business, profession, or occupation is a matter of statewide concern and is not subject to further inconsistent regulation by a county, city, town, or other political subdivision of this state. This chapter preempts all inconsistent rules, regulations, codes, ordinances, and other laws adopted by a county, city, town, or other political subdivision of this state regarding the right of individuals to pursue a chosen business, profession, or occupation.

SECTION 4. This act shall take effect July 1, 2016, the public welfare requiring it.